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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,038	07/30/2001	Bryan P. Staker	020974-2.00	3955

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EXAMINER

LUU, PHO M

ART UNIT	PAPER NUMBER
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2824

DATE MAILED: 07/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/919,038

Applicant(s)  
Staker et al.

Examiner  
Pho Luu

Art Unit  
2824



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-17 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

Art Unit : 2824

**DETAILED ACTION**

***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-10, drawn to an array apparatus, classified in class 257, subclass 415.

Group II. Claims 11-17, drawn to a method for fabricating a micro machined, classified in class 438, subclass 156.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as an array of apparatus and a method for fabricating a micro machined made. The inventions are distinct if either or both of the following can be shown: (1) that an array apparatus as claimed can be used to make other and materially different a method for fabricating a micro machined or (2) that a method for fabricating a micro machined as claimed can be made by another and materially different an array apparatus (MPEP § 806.05(f)). In the instant case (2) a method for fabricating a micro machined apparatus comprising the steps of providing a wafer with a metallized obverse surface, etching an array of a cavity and hinges as claimed can be made by another different an array apparatus comprising a micro machined structure having a plurality of actuatable elements, an insulative substrate, electrostatic electrodes.

Art Unit : 2824

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. The inventions are distinct, each from the other because of the following reasons: A telephone call was made to Mr William C. Banyai on June 20, 2002 to discuss the restriction issue of this application, but did not result in an election being made.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventor ship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventor ship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

### *Conclusion*

6. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Pho M. Luu whose telephone number is (703) 306-5943. The examiner can normally be reached on Monday through Friday from 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Elms, can be reached on (703) 308-2816. My direct fax telephone number is

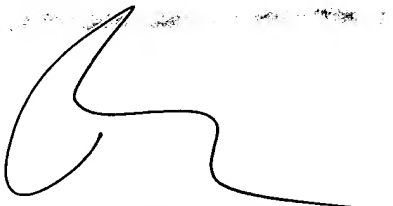
Art Unit : 2824

7003-746-4261. The official faxes for technology center 2800 should be sent to 703-872-9318.

The official after final faxes for technology center 2800 should be send to 703-872-9319.

Any inquiry of a general or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 308-0956.

Pho M. Luu  
Art Unit 2824  
June, 2002.



RICHARD ELMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800